

once again that Laguna Valderrama does not contain each and every element of claim 1. Specifically, the claim recites that “the threaded cap is secured to the threaded vessel when the cap flange and the vessel flange are aligned.” From a view as shown in Figure 2 of the cap and flask of Laguna Valderrama from a top view, the flanges referred to in Laguna Valderrama are round. As such, there is no mechanism by which the flanges of Laguna Valderrama can be “aligned” to show securing of the cap to the vessel as recited in claim 1. There is further no indication in Laguna Valderrama of any intention to have flanges aligned to show that the cap has been secured to the flask, as is also required by claim 1.

Still further, a viewing of all of the Figures in Laguna Valderrama, as well as a thorough reading of the text of the application, does not teach or disclose any way by which the flanges of the cap and flask of Laguna Valderrama could be identified to be aligned in any way whatsoever. Applicant submits that it is not inherent that round flanges can be aligned so as to meet the recitation of claim 1.

MPEP 2131 states in relevant part the requirements for an anticipation rejection:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Alignment is specifically described in the specification, for example at page 15, lines 20-21; page 16, lines 17-19; page 17, lines 16-30; and page 18, line 29 through page 19, line 3. The claims are to be read in view of the specification. A reading of the specification indicates that the alignment is of the edges of the flanges, which is not present with the round flanges of Laguna Valderrama. As such, Applicant respectfully submits that claim 1 is allowable.

pg 17  
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passage that  
mentions the  
word align

Rejections under 35 USC §103

Claims 2-3 and 12 were rejected under 35 USC § 103(a) as being unpatentable over Laguna Valderrama in view of Long, Jr., US Patent No. 6,059,134. The Office Action only states that claims 2-3 were rejected, but the explanation indicates the previous rejection of claim 12 is maintained. Applicant traverses this rejection.

MPEP 2143 states in relevant part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Further, MPEP 2143.03 further states in relevant part:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

As discussed above, Laguna Valderrama does not show each and every element of claim 1. As Long, Jr. also does not contain any teaching or disclosure of the deficient elements of claim 1, the combination of Laguna Valderrama and Long, Jr. does not meet the requirement of a rejection under 35 USC § 103 that the references must contain each and every element of the claims. As such, Applicant respectfully submits that claims 2-3 and 12 are allowable.

Claim 12 was rejected under 35 USC § 103(a) as being unpatentable over Laguna Valderrama in view of Long as applied to claims 2-3 above, and further in view of Burns, US Patent No. 5,288,466. Applicant traverses this rejection. As

Applicant has discussed above with respect to claims 1-3, Laguna Valderrama and Long, Jr. do not contain each and every element of the claim. Therefore, no *prima facie* case of obviousness is presented. Burns does not add any mention, teaching, or disclosure of the deficient elements not found in Laguna Valderrama or Long, Jr. The cap 54 of Burns is round, as is shown clearly in the Figures and described in the specification of Burns, particularly at col. 4, ll. 50-66. As such, no *prima facie* case of obviousness is presented, and the rejection cannot be maintained. Applicant respectfully submits that claim 12 is allowable.

Claims 1-9, 12, and 18-22 were rejected under 35 USC § 103(a) as being unpatentable over Burns in view of Long, Jr. As has been discussed above, neither Burns nor Long, Jr. disclose the elements of the claims, as required to state a *prima facie* case of obviousness.

As to the unsupported comments of the Office Action regarding manufacture of flanges of any shape, there is no suggestion or motivation to make flanges of other shapes, absent hindsight gained from Applicant's disclosure. The shaped flanges serve a purpose not addressed by the art.

As such, the rejections of claims 1-9, 12, and 18-22 cannot stand. Applicant respectfully submits that claims 1-9, 12, and 18-22 are allowable.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2203.

Respectfully submitted,

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Date

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